

declared to be fraudulent and void; provided that no non-resident of this State shall be entitled to avail himself of the provisions of this section, whether he be sole or part owner of any land in this State; and in case of the death of any citizen who may have located and appropriated any lot under the provisions of this section, his executors or administrators shall have the exclusive use, possession and control of such lot as fully as the person so dying had, for the purpose of protecting, cultivating and removing the oysters planted on said lot for the period of three years from the date of the death of the person appropriating such lot; and any person or persons taking or attempting to take oysters thus planted or bedded shall be deemed guilty of a misdemeanor and upon conviction before a justice of the peace trying the case shall be fined a sum not less than fifty dollars nor more than one hundred dollars and be imprisoned in the house of correction for a period of three to six months, one-half of said fine to be paid to the informer and the other half to be paid to the county commissioners for the use of the public schools. This section not to apply to Somerset, St. Mary's and Calvert counties, for which special laws are enacted.

The provision of this section with reference to no one person owning more than one lot of five acres, cannot be evaded. If an evasion is attempted, the party gets no title to additional lots, nor do his assignees. The privilege given by this section has no element of a grant or patent, but is simply a revocable license. It is neither inheritable nor assignable. The oysters planted in pursuance of this section remain personal property of planter. *Hess v. Muir*, 65 Md. 599. See also *Powell v. Wilson*, 85 Md. 357; *Windsor v. State*, 103 Md. 613; *Phipps v. State*, 22 Md. 380.

The three classes of proprietors under this section and sec. 51, distinguished. The priority given is not an incident of the estate of riparian owner, but is a mere privilege which is essentially different from rights conferred by art. 54, sec. 47, *et seq.* Construction of the words "lying and bordering." To whom the notice under this section must be given; when notice is dispensed with, and when it may be posted. *Handy v. Maddox*, 85 Md. 550.

Under act of 1894, ch. 380, the only question that can be summarily determined by judge of circuit court in accordance with this section is whether five acres located constitute a natural bed. The judge is without jurisdiction to determine other matters and if he undertakes to do so, court of appeals may review his order. *Travers v. Dean*, 98 Md. 75.

No appeal lies from the determination of circuit court that an appropriated bed is a natural bed, and setting aside location. *Jackson v. Bennett*, 80 Md. 77.

There is no conflict between this section and sec. 52. *Powell v. Wilson*, 85 Md. 358.

For a case construing and declaring constitutional a similar section in the Code of 1860, see *Phipps v. State*, 22 Md. 380.

For a case involving the act of 1829, ch. 87, see *Baltimore v. McKim*, 3 Bl. 469. *Quære*, as to whether the portion of this section denying its benefit to nonresidents is valid. *Hess v. Muir*, 65 Md. 606 (separate opinion).

See notes to sec. 52.

An. Code, 1924, sec. 50. 1912, sec. 48. 1904, sec. 47. 1900, ch. 380, sec. 46A.

**51.** It shall be unlawful for any person or persons or corporation to locate or appropriate any natural bar or bed of oysters by certificate, as provided in section 50 of this article, and such unlawful location is hereby declared a misdemeanor, and upon conviction before a court of competent jurisdiction or justice of the peace, there shall be a fine of not less than fifty dollars or imprisonment for not more than three months, or both fine and imprisonment, in the discretion of the court.

See notes to sec. 50.

An. Code, 1924, sec. 51. 1912, sec. 49. 1904, sec. 48. 1894, ch. 380, sec. 47.

**52.** If any creek, cove or inlet not exceeding one hundred yards at low water in breadth at its mouth make into the land, or if any creek, cove or inlet of greater width than one hundred yards at low water mark make into the land, the owner or other lawful occupant shall have the exclusive